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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/763,929

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EXAMINER

SWEARINGEN, JEFFREY R

ART UNIT

PAPER NUMBER

2445

NOTIFICATION DATE

DELIVERY MODE

12/18/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/763,929	<b>Applicant(s)</b> RAJAN ET AL.	
	<b>Examiner</b> Jeffrey R. Swearingen	<b>Art Unit</b> 2445	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/29/2008 has been entered.

### ***Response to Arguments***

2. Applicant's arguments filed 9/29/2008 have been fully considered but they are not persuasive.

3. Applicant amended the claims to include the limitation *allowing the user to adjust the level of likelihood of spam that is required for placement of emails in the electronic mail directories*. Column 6, lines 25-30 states that the end user is able to edit the configuration information for the spam filter. Column 7, lines 1-9 deals with updating the spam filter for false positives. Column 7, lines 23-32 deals with a user "modifying their spam filtering preferences, viewing a report of mail messages and how that mail was categorized and handled, and allowing the users to find and retrieve 'false positives'". This is *allowing the user to adjust the level of likelihood of spam that is required for placement of emails in the electronic mail directories* since the end user is directly altering the spam filtering preferences and mail categorization.

4. Applicant did not respond to the rejection of claims 8-9 under 35 U.S.C. 101; therefore Applicant has conceded the propriety of this rejection.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Loughmiller et al. (US 7,257,564).

7. In regard to claim 1, 8, 10, 11, , Loughmiller disclosed:

*providing at least three electronic mail directories, each electronic mail directory being assigned a range of likelihood of spam content, said range being between no-likelihood-of-spam-content to very-high-likelihood-of-spam content;* column 2, lines 7-30

*grading the incoming electronic mail for likelihood of spam content, the grading based on user pre-defined criteria provided by a user;* column 6, lines 27-46

*placing each of the incoming electronic mail into one of the at least three electronic mail directories whose assigned ranges of likelihood of spam content encompass the likelihood of spam content grade of the incoming electronic mail; and* Column 6, lines 31-46; column 5, lines 12-37

*allowing the user to adjust the level of likelihood of spam content that is required for placement of emails in the electronic mail directories.* Column 7, lines 23-32

8. In regard to claim 2, 9, Loughmiller disclosed:

*the likelihood of spam content ranges assigned to at least two of the directories overlap such that an electronic mail whose grade is encompassed within the overlap is assigned to both of such directories.*

Column 5, lines 23-37. The different classes of mail are stored in different mailboxes – column 5, lines 35-37. All mail that is allowed through the spam filter, regardless of being good or bulk messages, is stored on the server level.

9. In regard to claim 3, Loughmiller disclosed:

*presenting the user with an indication that the incoming electronic mail has been placed in more than one directory.* Column 7, lines 1-9; column 7, lines 23-32

10. In regard to claim 4, Loughmiller disclosed:

*prompting the user to take an action on the incoming electronic mail that has been placed in more than one directory.* Column 7, lines 23-32

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11. In regard to claim 5, Loughmiller disclosed:  
*voting on the likelihood of spam content of the incoming electronic mail.* Column 7, lines 23-32
12. In regard to claim 6, Loughmiller disclosed:  
*receiving new information on user behavior and re-grading the electronic mail based on the new information.* Column 7, lines 1-9
13. In regard to claim 7, Loughmiller disclosed:  
*relocating electronic mail from one directory to another based on the re-grading.* Column 7, lines 23-32
14. In regard to claim 12, Loughmiller disclosed:  
*retrieving stored electronic mail messages;* column 7, lines 1-9  
*reclassifying the stored electronic mail messages according to the grading of the incoming electronic mail messages, wherein said stored electronic mail messages and the incoming electronic mail messages contain a common criterion used in the grading; and* column 7, lines 1-9  
*reassigning the stored electronic mail messages to another electronic mail directory based upon the reclassification.* Column 7, lines 1-9
15. In regard to claim 13, Loughmiller disclosed:  
*prompting the user before the stored electronic mail messages are reassigned.* Column 7, lines 23-32
16. In regard to claim 14, Loughmiller disclosed:  
*the number of directories is specified by the user.* Column 7, lines 23-32
17. In regard to claim 15, Loughmiller disclosed:  
*assigning a label to each directory, said label comprising a user-friendly identifier.* Column 5, lines 12-37
18. In regard to claim 16, Loughmiller disclosed:  
*the user-friendly identifier is selected from a group consisting of: colors, names, tasks, content and spam levels.* Column 5, lines 12-37
19. In regard to claim 17, Loughmiller disclosed:

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*the ranges are assigned by the user.* Column 7, lines 1-9

***Claim Rejections - 35 USC § 101***

20. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

21. Claims 8-9 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claimed mail system is software *per se* that is not embodied upon any hardware or computer-readable medium. Software *per se* is not patentable. *Parker v. Flook*. Applicant's claims are directed to a grader and email directories. It is apparent from Applicant's specification, page 16, [0029] that the "grader" is intended to encompass "any algorithm that grades e-mails for spaminess". The email directories are not hardware, but software directory structures. The grader and the email directories are non-functional descriptive subject matter.

***Conclusion***

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- |     |                 |                    |
|-----|-----------------|--------------------|
| 23. | US 6,546,416    | Kirsch             |
| 24. | US 6,615,241    | Miller et al.      |
| 25. | US 6,842,773    | Ralston et al.     |
| 26. | US 7,219,148    | Rounthwaite et al. |
| 27. | US 7,433,923    | Adkins             |
| 28. | US 2002/0116463 | Hart               |
| 29. | US 2003/0009698 | Lindeman et al.    |

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Swearingen whose telephone number is (571)272-3921. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Donaghue can be reached on 571-272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jeffrey R. Swearingen  
Examiner  
Art Unit 2445

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Examiner, Art Unit 2445